



House of Representatives

General Assembly

File No. 319

February Session, 2018

Substitute House Bill No. 5396

House of Representatives, April 9, 2018

The Committee on Banking reported through REP. LESSER of the 100th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT PROTECTING VICTIMS OF FRAUD BY CERTAIN FINANCIAL INSTITUTIONS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 Section 1. (NEW) (*Effective January 1, 2019*) (a) Any person who
- 2 suffers any ascertainable loss of money or property, real or personal, as
- 3 a result of the use or employment of a method, act or practice
- 4 prohibited by section 42-110b of the general statutes by any financial
- 5 institution, out-of-state bank or out-of-state credit union, each as
- 6 defined in section 36a-2 of the general statutes, or mortgage servicer, as
- 7 defined in section 36a-715 of the general statutes, may bring an action
- 8 in the name of the state in the judicial district in which such person
- 9 resides or is doing business for an order temporarily or permanently
- 10 restraining and enjoining the continuance of such method, act or
- 11 practice and for an order directing restitution. Proof of public interest
- 12 or public injury shall not be required in any action brought pursuant to
- 13 this section. The court may award the relief applied for or so much as it
- 14 may deem proper, including reasonable attorney's fees, accounting

15 and such other relief as may be granted in equity.

16 (b) An action commenced under subsection (a) of this section may
17 allege violations of section 42-110b of the general statutes that have
18 affected other persons similarly situated who are residents of this state
19 or injured in this state.

20 (c) Any person commencing an action pursuant to subsection (a) of
21 this section shall mail a copy of the complaint by certified mail, return
22 receipt requested, to the Attorney General and the Commissioner of
23 Consumer Protection at the same time such complaint is filed with the
24 court. Such action shall be automatically stayed until thirty days after
25 the complaint is filed with the court. The Attorney General may
26 intervene as plaintiff in the action and prosecute any and all claims
27 asserted in the complaint in the place and stead of the person who
28 initiated the action: (1) As of right during the period of such automatic
29 stay, and (2) for good cause shown after the expiration of such
30 automatic stay. Except as provided in subsection (d) of this section, the
31 Attorney General may dismiss or settle any action in which it
32 intervenes as plaintiff, notwithstanding any objection by the person
33 commencing the action. No person other than the Attorney General
34 may intervene in any action commenced under this section.

35 (d) The court shall review any proposed agreement to settle an
36 action commenced under this section. If the Attorney General has not
37 intervened in the action, terms of the proposed settlement agreement
38 shall be submitted to the Attorney General by certified mail, return
39 receipt requested, at the same time such agreement is submitted to the
40 court for review. The Attorney General shall have not more than two
41 weeks from the date of such submission to oppose the proposed
42 settlement by sending a letter by certified mail, return receipt
43 requested, to the clerk of the court and all parties to the proposed
44 settlement. Upon receipt of such letter, the clerk of the court shall make
45 the letter a part of the case file. The court shall not approve any
46 proposed settlement opposed by the Attorney General.

47 (e) Any financial institution, out-of-state bank, out-of-state credit

48 union or mortgage servicer who violates the terms of a temporary or
49 permanent restraining order or an injunction issued pursuant to
50 subsection (a) of this section shall forfeit and pay to the state a civil
51 penalty of not more than twenty-five thousand dollars per violation.
52 For the purpose of this section the court issuing the injunction shall
53 retain jurisdiction, and the cause shall be continued, and in such cases
54 the Attorney General or the person acting in the name of the state may
55 petition for recovery of civil penalties.

56 (f) If the court finds that a financial institution, out-of-state bank,
57 out-of-state credit union or mortgage servicer is wilfully using or has
58 wilfully used a method, act or practice prohibited by section 42-110b of
59 the general statutes, the state may recover, upon petition of the
60 Attorney General or the person acting on behalf of the state, a civil
61 penalty of not more than five thousand dollars for each violation. For
62 the purposes of this subsection, a wilful violation occurs when the
63 party committing the violation knew or should have known that such
64 party's conduct was a violation of section 42-110b of the general
65 statutes.

66 (g) In any action where the state recovers a settlement payment or
67 civil penalty pursuant to subsection (e) or (f) of this section, the court
68 shall award (1) not more than ten per cent of the total amount
69 recovered by the state to the person who initiated the action if the
70 Attorney General intervened in such action pursuant to subsection (c)
71 of this section, or (2) not more than twenty-five per cent of the total
72 amount recovered by the state to the person who initiated such action
73 if the Attorney General did not intervene in the action pursuant to
74 subsection (c) of this section.

75 (h) Any action commenced under this section shall be prosecuted on
76 behalf of the state and no arbitration agreement executed by the person
77 commencing such action shall waive or limit such person's right to
78 prosecute such action in the name of the state. Any person
79 commencing an action under this section shall not be exempt from
80 court fees pursuant to section 52-259a of the general statutes.

81 (i) An action commenced under this section shall not prevent any
82 person from bringing an action for damages pursuant to section 42-
83 110g of the general statutes, nor shall a prior action brought pursuant
84 to section 42-110g of the general statutes prevent any person from
85 bringing an action under this section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>January 1, 2019</i>	New section

BA *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 19 \$	FY 20 \$
Resources of the General Fund	GF - Revenue Impact	See Below	See Below

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill, which would allow private parties to act on behalf of the state in certain actions brought through the Connecticut Unfair Trade Practices Act (CUTPA), results in a potential net revenue loss to the general fund on average, though not necessarily in every year.

Revenue from CUTPA settlements varies annually. Under the terms of the bill, the state would retain 75 to 90 percent of settlement revenue in cases where the action was first initiated by a private party, with the 10 to 25 percent of settlement revenues going to the private parties. To the extent that additional actions are taken, and financial restitution is provided, this bill could create additional revenue to the state. However, if private parties bring action in cases where the state was already likely to take action for itself, the state would see a 10 to 25 percent reduction in settlement revenue. Because the state regularly pursues CUTPA cases that result in sizeable settlements already, it is likely that the revenue lost through the sharing requirements in the bill would be more than enough to offset any revenue gain from the increase in cases that result in low, or no, revenue increases. This is furthered by the provisions of the bill that give the state 90 percent of the revenue when the state intervenes and 75 percent when the case

proceeds without state intervention.

For example, the Attorney General settled a CUTPA case with Bank of America Corp., JP Morgan Chase & Co., Wells Fargo & Company, Citigroup Inc. and Ally Financial Inc., in FY 12 that resulted in \$26 million in revenue for the general fund. Had this action been first initiated by a private party under the terms of the bill, 10 percent of this portion of the settlement would have gone to private parties, a potential loss of \$2.6 million to the general fund.

While the bill has the potential to increase workload for the Attorney General, the bill does not require that the Attorney General respond to all cases. Instead it allows the office multiple opportunities at which to intervene. Without additional resources provided to aid the department, it is likely the department will continue with its current caseload. As the bill limits the time frame the department has to respond to either the initial action or a proposed settlement, it seems likely the department will not have the resources necessary to respond to all cases. As indicated above, not having the resources at hand to respond in the limited time frames required by the bill may result in a reduction in the settlement revenue of any case that produces settlement revenue for the general fund.

The bill limits private actions to violations that involve financial institutions, out-of-state banks, out-of-state credit unions, or mortgage servicers. As cases involving these types of entities are a portion of all CUTPA cases, the overall impact on the possible changes in revenue, positive and negative, are somewhat mitigated.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**sHB 5396*****AN ACT PROTECTING VICTIMS OF FRAUD BY CERTAIN FINANCIAL INSTITUTIONS.*****SUMMARY**

This bill gives certain individuals the right to bring an action in the name of the state, without proof of public interest or public injury, for a violation of the Connecticut Unfair Trade Practices Act (CUTPA) by a financial institution, out-of-state bank, out-of-state credit union, or mortgage servicer. By law, financial institutions include state banks and credit unions and entities whose Connecticut activities are subject to the banking commissioner's oversight.

The right established by the bill applies to anyone who suffers an ascertainable loss of money or property due to an unfair trade practice by the above listed entities.

Under the bill, the aggrieved individual must bring the action in the judicial district where he or she resides or is doing business. He or she may ask the court for an order to temporarily or permanently restrain and enjoin the unfair trade practice and for restitution. The attorney general may intervene in the action, in the place of the person initiating the action, and prosecute the claims.

The bill establishes civil penalties of (1) up to \$25,000 per violation of a temporary or permanent restraining order or court injunction issued in the action and (2) up to \$5,000 per willful violation of the state's unfair trade practice law. If the state recovers a civil penalty or settlement payment, the court must award the person who initiated the action (1) up to 10% if the attorney general intervened and (2) up to 25% if the attorney general did not. The court may award the relief requested, as it deems proper, including reasonable attorney's fees,

accounting, and other equitable relief.

The bill specifies that anyone bringing an action under the bill is not exempt from court fees.

EFFECTIVE DATE: January 1, 2019

RIGHT TO BRING AN ACTION

Under the bill, the action may allege violations that have affected other similarly situated individuals who are residents of, or injured in, Connecticut. It does not prevent an individual from bringing a class action, nor does a prior class action prevent him or her from bringing an action under the bill. And an arbitration agreement does not waive or limit an individual's right to pursue the action set out in the bill.

Existing law permits someone to bring a court action, on their own behalf, to recover actual damages for an ascertainable loss of money or property due to an unfair trade practice. The court may also award punitive damages and equitable relief in these actions (see BACKGROUND).

ATTORNEY GENERAL INTERVENTION

The bill requires anyone beginning an action to mail a copy of the complaint by certified mail, return receipt requested, to the attorney general and the consumer protection commissioner at the same time it is filed with the court. The action is then automatically stayed for 30 days.

The attorney general may intervene as plaintiff in the action and prosecute any claims asserted in the complaint. He may do so (1) as of right during the automatic stay and (2) for good cause shown after it expires. No one else may intervene in the action.

The attorney general may dismiss or settle any action in which he intervenes as plaintiff, despite an objection by the person who initiated the action.

PROPOSED SETTLEMENT AGREEMENT

The court must review any proposed settlement agreement. If the attorney general has not intervened in the action, the proposed agreement's terms must be submitted to him by certified mail, return receipt requested, at the same time it is submitted to the court for review. The attorney general then has two weeks to oppose the agreement, which he must do by sending a certified letter, return receipt requested, to the clerk of the court and all parties to the settlement. The clerk must make the letter part of the case file. If the attorney general opposes the settlement, the court may not approve it.

CIVIL PENALTIES

Under the bill, a financial institution, out-of-state bank, out-of-state credit union, or mortgage servicer that violates an associated temporary or permanent restraining order or court injunction, must pay the state a civil penalty of up to \$25,000 per violation. The court issuing the injunction keeps jurisdiction and continues the matter, and the attorney general or the person acting in the name of the state may petition to recover civil penalties.

If the court finds that a financial institution, out-of-state bank, out-of-state credit union, or mortgage servicer is willfully using or has willfully used an unfair trade practice, the state may recover, upon petition of the attorney general or the person acting on behalf of the state, a civil penalty up to \$5,000 per violation. A willful violation occurs when the violator knew or should have known that the conduct violates the state's unfair trade practice laws.

BACKGROUND

CUTPA

The law prohibits businesses from engaging in unfair and deceptive acts or practices. CUTPA allows the consumer protection commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than \$10,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. It also allows individuals

to sue. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorney's fees; and impose civil penalties of up to \$5,000 for willful violations and \$25,000 for violation of a restraining order.

COMMITTEE ACTION

Banking Committee

Joint Favorable Substitute

Yea 10 Nay 9 (03/20/2018)